

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS DANIEL,

No. C 07-01972 SBA (PR)

Petitioner,

**ORDER DIRECTING RESPONDENT TO
SHOW CAUSE WHY THE PETITION
SHOULD NOT BE GRANTED AS TO
CLAIMS ONE, TWO AND FIVE**

v.

ROBERT L. AYERS, Warden,

Respondent.

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. The Court ordered Respondent to show cause why the petition should not be granted. Respondent filed a motion to dismiss the petition as not fully exhausted. Petitioner filed an opposition to the motion.

In an Order dated July 29, 2008, the Court granted the motion to dismiss and ordered Petitioner to make an election regarding how he wanted to proceed with regard to his unexhausted claims. The Order required Petitioner to file a notice in which he stated whether he elected to:

- (1) dismiss the unexhausted claims and go forward in this action with only the remaining claims;
- (2) terminate this action and return to state court to exhaust all of his claims before returning to federal court to present all of his claims in a new petition; or (3) request a stay of the proceedings while he completes the exhaustion of his unexhausted claims in the California Supreme Court.

On August 6, 2008, Petitioner filed a "Notice for this Court to Proceed With Exhausted Claims One, Two, and Five," in which he elected to dismiss his unexhausted claims and proceed with only the exhausted claims. Pursuant to Petitioner's notice, unexhausted claims three, four and six are dismissed from this action.

In light of the dismissal of the unexhausted claims, the petition appears to contain only exhausted claims one, two and five, which should be addressed on their merits. The Court now sets

a new schedule below for the parties to file their briefs pursuant to the September 12, 2007 Order To Show Cause.

CONCLUSION

1. Petitioner's claims three, four and six are DISMISSED based on his voluntary dismissal of those claims in his August 6, 2008 notice.

2. Respondent shall file with this Court and serve upon Petitioner, within **sixty (60) days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued as to claims one, two and five. Respondent shall file with the Answer a copy of all portions of the relevant state records that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

3. If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with the Court and serving it on Respondent within **thirty (30) days** of his receipt of the Answer. Should Petitioner fail to do so, the petition will be deemed submitted and ready for decision **thirty (30) days** after the date Petitioner is served with Respondent's Answer.

4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court and Respondent informed of any change of address and must comply with the Court's orders in a timely fashion. Petitioner must also serve on Respondent's counsel all communications with the Court by mailing a true copy of the document to Respondent's counsel.

5. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than **ten (10) days** prior to the deadline sought to be extended.

IT IS SO ORDERED.

DATED: 9/2/08


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4
5

6 DEMETRIUS DANIEL,
7 Plaintiff,

Case Number: CV07-01972 SBA

CERTIFICATE OF SERVICE

8 v.

9 ROBERT L. AYERS et al,
10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on September 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Demetrius Daniel E-03098
19 San Quentin State Prison
20 San Quentin, CA 94964

21 Dated: September 4, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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